IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2100 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBHAI P. SOLANKI - DECD.BY HEIR-KIRANBEN BABUBHAI SOLANKI - Appellant(s)

Versus

MERAMBHAI RAMBHAI & 1 - Defendant(s)

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Appearance :

MR RC KAKKAD for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR PV NANAVATI for Defendant(s) : 2,
MR VIBHUTI NANAVATI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/11/2006

ORAL JUDGMENT

This appeal has been directed against the judgment and award

made by the Motor Accident Claims Tribunal [Main], Junagadh dated 19th April, 1995 in M.A.C. Petition No. 822 of 1991. The judgment is a common judgment passed in other cognate matters also. However, so far as the appeal is concerned, it pertains to M.A.C. Petition No. 822 of 1991.

2. This petition was filed by the deceased claimant for the injuries sustained by him for obtaining compensation of Rs.1 lakh. He sustained injuries in a vehicular accident which took place on 29th June, 1991. He was hospitalized for treatment in a Government hospital. He received injuries on leg. He was doing tailoring work. According to him, even after treatment there was permanent disability in the left leg to the extent of 18%. He, therefore, preferred M.A.C. Petition No. 822 of 1991 on 29th October, 1991. Unfortunately, before the petition could be decided, he expired. His heirs and legal representative – the present appellant, who happens to be his son, prosecuted the proceedings. At the end of the trial, the Tribunal held that since the present case was of personal injury, the action died with the deceased and the appellant had no locus-standi to prosecute the appeal. While doing so, the Tribunal referred to section 306 of the Indian Succession Act as well as several decisions which have been cited at the bar. It is this judgment which is now challenged by the appellant in this appeal.

3. Mr. Kakkad, learned advocate for the appellant has submitted that

the judgment of the Tribunal is erroneous. He has further submitted that in such cases the view of the Gujarat High Court is that the proceedings will remain alive and the heirs and legal representatives will be entitled to prosecute the same. While advancing his submission, he has drawn my attention to para. 28 of the judgment wherein the gist of the reasoning of the Tribunal is reflected. He has also placed reliance on decisions of this Court, one is rendered in the case of Gujarat State Road Transport Corporation v/s. Amishkumar Vinodbhai reported in 1996 (3) G.L.R. Page 212 and the other in the case of Jenabai, widow of Abdul Karim Musa V/s. Gujarat State Road Transport Corporation reported in 1991 (1) G.L.H. 404.

3.1. The record shows that the father of the present appellant, who was the original claimant, expired on 4th February 1994 during pendency of the proceedings before the Tribunal. The appellant, therefore, made application under Order 22 of the Code of Civil Procedure on 28th March, 1994 for being joined as legal representative of the deceased-claimant to the proceedings. The same was granted by the Tribunal and the name of the appellant was substituted in place of the deceased-claimant and the appellant was allowed to prosecute the proceedings. However, as already stated above, the claim petition was dismissed by the Tribunal on the ground that the right of the original claimant to receive compensation got extinguished with his death.

4. I have perused the judgment of the Tribunal. I have also heard Mr. Kakkad, learned advocate for the appellant and Mr. Vibhuti Nanavati, learned advocate for the respondents. In the case of GSRT Corporation v/s. Amishkumar [supra] this Court has considered the provisions of section 306 of the Indian Succession Act as also the provisions of the Fatal Accidents Act and the provisions of Order 22 of the Code of Civil Procedure. In para. 14 of the judgment, this Court has observed as under and has held that under such circumstances, the petition does not abate and right to sue survives to the heirs and legal representatives :-

> "14. Since the aim of award of damages is to compensate the person wronged, there is no reason why measure of damages pertaining to estate should be in any way affected or limited by the death of the original victim of the accident. In my view, the maxim *actio personalis moritur cum persona* is considerably abrogated by the judicial pronouncements. The scope of the provisions of section 306 of the Seccession Act and the maxim " *actio personalis moritur cum persona"* appears to be well settled and the claim of damages on account of loss to the estate of the injured would not abate on his death. The claim regarding loss caused to the estate would include several items such as medical expenses, miscellaneous expenses, actual loss of income from the date of injuries till the death of the injured, etc. But for the injuries sustained, the injured would not have been required to incur the said expenses nor would have suffered actual loss of income. Therefore, even after the death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives."

In the case of Jenabai, widow of Abdul Karim Musa [supra] this Court has observed as under :-

> "10. Tort, frequently, involves a non-pecuniary loss. Even pecuniary loss of the deceased, being personal to him and no proper entitlement to a place in the assessment of the damages which goes to his estate. But the pecuniary loss suffered by the deceased on account of such injuries, an action would lie or action would survive for the benefit of the estate of the deceased. The claim, on account of loss to the estate of the deceased, would, undoubtedly, survive and would pass over to his heirs or legal representatives. Section 306 of the Indian Succession Act does not exclude right to recover claim on the basis of proprietary right. In a case of personal injuries, arising out of vehicular accident, it may include pecuniary loss as well. This pecuniary loss or any loss which is referable to the loss to estate would be proprietary or right pertaining to property. Therefore, the right to maintain the action or to continue the action for recovery of pecuniary and proprietary loss which are referable or attributable to the loss to the estate, cannot be said to have been taken away by the provisions of Section 306 of the Indian Succession Act. If the provisions of section 306 of the Indian Succession Act is extended to all causes of action, including those affecting proprietary or property, i.e., to the estate, would be to stultify to a great extent the provisions of Section 242 (2). If it is stretched to that, it would be nugatory, which empowers a Hindu, Muhammadan, Buddhist, Sikh, Jain, Indian Christian or Parsi from applying for letters of administration in case of intestacy. Such a construction of Section 306 of the Indian Succession Act would raise a direct conflict with the provisions of Order 22 Rule 3 (1) of the Civil Procedure Code. Moreover, the liability to pay compensation is created immediately on the occurrence of the accident

to the person suffering the injury and must amount to a debt payable to him and pass over to the heirs of the workman on his death and does not abate. Thus, provisions of Section 306 of the Indian Succession Act has no application to such cases. Therefore the maxim "*actio personalis moritur cum persona"* on which Section 306 of the Indian Succession Act is based, cannot have a blanket applicability in all actions even in a case of personal injuries wherein the damage flow from the head or under the head of loss to the estate. It may be mentioned that in England, the said maxim has been criticised as harsh, unconscionable and unjust. The rightful claim falling in the realm of pecuniary or proprietary or loss to the deceased's estate would survive, which is not personal to the deceased. It may also be mentioned that the words "*personal injury"* occurring in Section 306 mean bodily or physical injury as opposed to the injury to the proprietary right. Therefore, a cause of action in respect of injury to the proprietary or loss referable to the deceased's estate flowing from the personal injury would not fall within the exception, but would, undoubtedly, survive. But if interpreted otherwise, as held by the Tribunal, would mean unjust enrichment and benefit to the wrong doer's estate and unjustifiable injury to the estate of the deceased. Unfortunately, the Tribunal has failed to address itself to such a vital and important aspect while considering and examining the provisions of Section 306 of the Indian Succession Act."

It has further observed as under :-

"15. The provisions of Section 306 of the Indian Succession Act relate only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tortfeasor. Therefore, it can be concluded that the maxim "*actio personalis moritur cum persona"* has been

considerably abrogated or modified by the provisions of Section 306 of the Indian Succession Act. Section 306 of the Indian Succession Act, explicitly, prescribes that all demands whatsoever and all rights to prosecute or defend any action or special proceedings existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault or other personal injuries not causing the death of the party. The loss to the estate or injury to the proprietary or property right affecting the estate of the deceased, thus, cannot be said to have been covered by the exception contained in Section 306 of the Indian Succession Act. The view of this Court is also fortified by the decision rendered in the case of Sampati Lal v. Hari Singh, reported in 1985 ACJ, 539. It was clearly held in the said decision that the right to sue is available to the legal representatives of the deceased as a claim on account of the deceased survived and passed over to his legal representatives. It was held in the said case that expenses incurred on treatment and loss of income from the date of accident to death amounts to a loss to the estate."

In fact this judgment has been referred to by the Tribunal, however, no plausible reasons have been assigned for not following the same. In view of the aforesaid decisions of this Court, it is very clear that right to sue survives and heirs and legal representatives of the deceased can prosecute the proceedings further. The Tribunal, therefore, clearly committed error in dismissing the claim petition. The Tribunal has simply discussed the aspect regarding Section 306 of the Indian Succession Act in its judgment. No exercise is carried out to assess the compensation, which otherwise the appellant would have been entitled to receive. Hence, it is necessary to remand this case to Tribunal to carry out that exercise and assess the compensation which may be payable to the appellant.

In the result, the judgment and order of the Tribunal are quashed and set aside. The matter is now remanded to it for determining the compensation payable to the appellant. Since the proceedings are quite old, the Tribunal is directed to carry out this exercise as expeditiously as possible and preferably within six months from the date of this judgment. The appeal is allowed with no order as to costs.

The Registry of this Court is directed to remit the R & P of the case forthwith to the concerned Tribunal.

[Akshay H Mehta, J.]

* Pansala.